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SUPREME COURT, U. S.

No. A-15

73-506

Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

DIAMOND CAB COMPANY OF SAN DIEGO COUNTY, INC.,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO,
Respondent,

and

JOHN F. DUFFY, SHERIFF OF COUNTY OF SAN DIEGO,
Real Party in Interest.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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September 13, 1973

ARTS & CRAFTS PRESS, SAN DIEGO, CALIF.

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JOHN F. DUFFY, SHERIFF OF COUNTY OF SAN DIEGO,
Real Party in Interest.

Petitioner DIAMOND CAB COMPANY OF SAN DIEGO COUNTY, INC., respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of California entered in this proceeding on June 20, 1973.

OPINION BELOW

Summarily and without a written decision or hearing, the Supreme Court of the State of California denied the petition of petitioner for hearing and for stay of proceedings filed with said Supreme Court. Rulings of said court and the Court of Appeal appear in the Appendix.

JURISDICTION

The judgment of the Supreme Court of the State of California was entered on June 20, 1973, and this petition for certiorari was filed within 90 days of that date. The jurisdiction of this court is invoked under 28 U.S.C. § 1257 (3).

QUESTION PRESENTED

WHAT IS THE PRESENT PERMISSIBLE BASIS FOR SUSPENSION OR REVOCATION OF A LICENSE OR OPERATING PERMIT, SUCH AS A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, WITHOUT A PRIOR HEARING?

CONSTITUTIONAL PROVISION INVOLVED

Basic due process rights guaranteed by the 14th Amendment to the United States Constitution have been possibly violated.

STATEMENT OF THE CASE

On March 9, 1973, without a hearing or prior notice of his intended actions and pursuant to Sections 21.305 and 21.305 (e) of Chapter 3 of Division 1 of Title 2 of the San Diego County Code of Regulatory Ordinances, the Sheriff of the San Diego County suspended the certificate of public convenience and neces-

sity of DIAMOND CAB COMPANY OF SAN DIEGO COUNTY, INC., for a period of 30 days. Said ordinance purports to grant to said sheriff broad discretionary powers to revoke permits, licenses, certificates, etc., regardless of necessity, thereby permitting said sheriff to take such action without a hearing which, in effect, can destroy a business in the unincorporated areas of San Diego County. Said Section 21.305 in its entirety reads as follows:

Sec. 21.305. TAXICAB CERTIFICATE, LICENSE-REVOCATION OR SUSPENSION. The Sheriff may revoke or suspend a certificate or license in whole or in part for any of the following acts on the part of the certificate holder, his agents, representatives or employees:

(a) The cessation of operation of taxicab or taxicabs for a total of thirty days in any six-month period without having prior approval from the Sheriff for such cessation. This provision does not apply to cessation of operation for a reasonable period of time due to regular maintenance of the vehicle.

(b) Charging or demanding from passengers fares exceeding those set forth in or authorized pursuant to this chapter for service rendered by such operator.

(c) With regard to any taxicab covered by a certificate, failure to replace a taxicab within thirty days of its removal from service.

(d) Knowingly making any false misleading or fraudulent statement of a material fact in the application for a certificate or the application for an operator's license.

(e) Violation of this chapter or any section thereof.

The Sheriff, upon revoking or suspending a certificate and/or the license shall mail by certified or registered United States mail written notice of such revocation or suspension to the operator at the address shown on the certificate or license. The notice shall include a statement of the reasons for the suspen-

sion or revocation and the time and manner in which the Sheriff's decision may be appealed. The Sheriff shall send a copy of such notice to the Clerk of the Board of Supervisors. The operator may appeal the Sheriff's decision in the manner provided in this chapter.

In its complaint filed March 12, 1973, in the Superior Court of the State of California, for the County of San Diego, petitioner alleged that said suspension violated basic due process rights guaranteed petitioner by the 14th Amendment to the United States Constitution in that said suspension deprived petitioner of property rights, *i.e.*, the conduct of the operation of its taxicabs, without being afforded the right to a prior hearing on the allegations upon which said suspension was based.

Without ruling on the aforementioned constitutional issue, the Superior Court of the State of California, for the County of San Diego, denied the motion of the petitioner for preliminary and permanent injunctions. Thereafter, the Court of Appeal of the State of California, Fourth District, Division One, denied the petition of petitioner for writ of mandate and for a stay of proceedings. Subsequently, the Supreme Court of the State of California denied the petition of petitioner for a hearing and for a stay of proceedings.

REASONS FOR GRANTING THE WRIT

No court below has specifically ruled on the question of whether Sections 21.305 and 21.305 (e) are unconstitutional on their face. However, it is the belief of petitioner that the decisions below not to grant a hearing may have been prompted by the case of *Stewart v. County of San Mateo* (1966) 246 Cal. App. 2d 273 which held that disregard of constitutional due process requirements is permissible in "emergency" situations. To the best

knowledge of petitioner, this case has never been followed or tested in the Supreme Court of the United States nor has the question it raises ever been considered by the Supreme Court of the United States subsequent to the modern line of decisions commencing with *Sniadach v. Family Finance Corp.* (1969) 395 U.S. 337 and its progeny, all of which require strict compliance with the requirements of due process, at least as to a fair and impartial hearing before deprivation of a significant property interest.

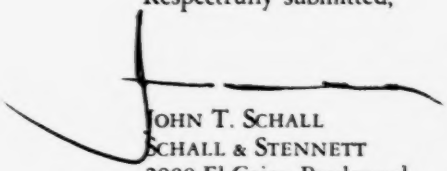
Should the *Stewart v. County of San Mateo* case be upheld, in the face of modern reasoning, petitioner further contends that in the present case petitioner corrected the few claimed minor abuses prior to any suspension. Therefore, there was no urgency or emergency sufficient to justify such total disregard of the constitutional rights of petitioner to a prior hearing and thus vitally touch the livelihood of approximately 140 of its employees. Failure to rule on this question will raise significant and recurring problems concerning efforts of local governmental bodies to properly draft legislation to control businesses operating under their permits without violating the constitutional due process rights of such businessmen.

To permit such a situation to continue without correction could enable local governmental bodies to make a mockery of recent United States Supreme Court rulings following the case of *Sniadach v. Family Finance Corp.* by claiming that these rulings did not consider "emergency" situations. Perhaps there are such emergency situations as would justify dispensing with a prior hearing; however, the kind of extraordinary situation that may justify summary deprivation of a prior hearing should be narrowly defined.

CONCLUSION

For this reason, a writ of certiorari should be issued to review the judgment and opinion of the Supreme Court of the State of California.

Respectfully submitted,



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September 13, 1973 *Counsel for Petitioner*

APPENDIX

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUN 20 1973

DEAR SIR: *I have this day filed Order*

HEARING DENIED

Petition terminated

In re: 4 Civ. *No.* 12671

Diamond Cab Company

vs.

Superior Court, San Diego

Respectfully,

G. E. BISHEL
Clerk

67733-677 10-72 5M OSP

RECEIVED MAY 2 1973

COURT OF APPEAL—STATE OF CALIFORNIA

Court of Appeal - Fourth Dist.
FILED
JOHN R. McDOWELL, Clerk
by Deputy

FOURTH APPELLATE DISTRICT

DIVISION ONE

[illegible] SAN DIEGO COUNTY, INC.,
Petitioner,
vs.
SUPERIOR COURT ETC., COUNTY OF SAN DIEGO,
Respondent,
JOHN F. DUFFY, SHERIFF OF SAN DIEGO COUNTY
Real Party in Interest.

4 Civil NO. 12671

SUPERIOR COURT NO. 340471

BY THE COURT:

The petition for writ of mandate with request for temporary stay of proceedings is denied.

PJ

Copies to: [illegible]

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IN THE

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October Term, 1973

DIAMOND CAB COMPANY OF
SAN DIEGO COUNTY, INC.,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO,
Respondent,

and

JOHN F. DUFFY, SHERIFF OF
COUNTY OF SAN DIEGO,
Real Party in Interest.

Certificate of Service

I hereby certify that on this thirteenth day of September, 1973, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to each of the following named persons:

Clerk of the Superior Court
(Attn:
Judge C. W. Froehlich, Jr.)
County Courthouse
220 West Broadway
San Diego, CA 92101

Robert C. Berrey
County Counsel
(Attn:
W. J. Schwartz, Jr., Deputy)
1600 Pacific Highway
San Diego, CA 92101

I further certify that all parties required to be served have been served.

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Counsel for Petitioner